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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/606,314

06/29/2000

Richard Fike

IVGN 174.1 DIV

1340

65482 7590 05/28/2009

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EXAMINER

FLOOD, MICHELE C

ART UNIT

PAPER NUMBER

1655

MAIL DATE

DELIVERY MODE

05/28/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Acknowledgment is made of the receipt and entry of the response to the requirement for species election in the response received on March 6, 2009. However, in further review of the claims as drafted, a requirement for restriction is deemed necessary as follows.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 27, 36, 92-95, 103, 111 and 122, drawn to an agglomerated mammalian cell culture medium powder prepared by agglomerating a dry powder mammalian cell culture medium with a solvent; wherein said agglomerated powder comprises a biological buffer and recombinant insulin and, upon being reconstituted with water, comprises all the necessary nutritive factors for the proliferation or cultivation of a mammalian cell *in vitro*, classified in class 435, subclass 406 or class 514, subclass 3, for example.
- II. Claims 123-125, drawn to an agglomerated protein-free mammalian cell culture medium powder prepared by agglomerating a protein-free, dry powder mammalian cell culture medium with a solvent, classified in class 435, subclass 404, for example.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the two different groups are directed to two different inventions. For instance, the invention of Group I is directed to an agglomerated mammalian cell culture medium powder prepared by agglomerating a dry powder mammalian cell culture medium with a solvent; wherein said agglomerated powder comprises a biological buffer and recombinant insulin and, upon being reconstituted with water, comprises all the necessary nutritive factors for the proliferation or cultivation of a mammalian cell *in vitro*, whereas the invention of Group II is directed to an agglomerated protein-free mammalian cell culture medium powder prepared by agglomerating a protein-free, dry powder mammalian cell culture medium with a solvent.

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

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Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is 571-272-0964. The examiner can normally be reached on 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1655

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michele Flood
Primary Examiner
Art Unit 1655

MCF
May 26, 2009

/Michele Flood/
Primary Examiner, Art Unit 1655